

CITY OF MIAMI BEACH
Office of the City Manager
Letter to Commission No. 138-2005



To: Mayor David Dermer and
Members of the City Commission

Date: May 27, 2005

From: Jorge M. Gonzalez
City Manager

A handwritten signature in cursive script, appearing to read "Jorge", written over the printed name.

Subject: Summons and Complaint for Amended Verified Petition for Temporary Injunction

Please be advised that this afternoon I was informed that the City (as a named Defendant) had been served (received at the City Attorney's Office on May 26, 2005) with a Summons, along with a copy of Plaintiff's Amended and Verified Petition for Temporary Injunction, on behalf of Juan Cortes (Plaintiff), who owns and operates So-Be Unique Shoes, located at 413 Espanola Way.

The Summons names The Market Company, the City of Miami Beach, and Claire Tomlin, individually as Defendants.

The Petition appears to be associated to the City's Concession Agreement with The Market Company, Inc. (Claire Tomlin, Principal) for its operation of the street market on Espanola Way.

The Petition appears to allege that the City, through its contractual relationship with the Market Company for the operation of the respective street market, which provides for Market Company vendors to locate on the Espanola Way right-of-way, "...have allowed the vendors to block Plaintiff's business from the view of the public" and "...have allowed the vendors to line the sidewalk and the street in front of Plaintiff's business.", thus harming Plaintiff's business.

The City Attorney's office attempted to contact the Plaintiff's attorney (Dennis G. Fano, Jr.) this afternoon, but left a message in his absence requesting copies of certain exhibits, which were not attached when the Summons was delivered, and copies of the original complaint that was filed with the Court.

I will keep you advised as additional information is obtained.

JMG:MD
Attachment

RECEIVED
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CITY CLERK'S OFFICE

05 CMB 0020-1230

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

JUAN CORTES,

CASE NO.: 05 06735CA 02

Plaintiff,

JUDGE

v.

THE MARKET COMPANY,
a Florida Corporation, THE CITY
OF MIAMI BEACH, a municipal
Corporation, and CLAIRE TOMLIN,
individually,

Defendants.

SUMMONS

THE STATE OF FLORIDA:
TO EACH SHERIFF OF THE STATE:

YOU ARE COMMANDED to serve this Summons and a copy of the Complaint
in this action on Defendant:

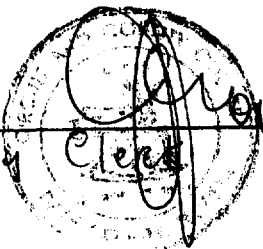
City of Miami Beach, Mayor David Dermer
C/O City Attorneys Office
1700 Convention Center Drive, 4th Floor
Miami Beach, FL 33139

A lawsuit has been filed against you. You have 20 calendar days after this Summons is served on you to file a written response to the attached Complaint with the Clerk of this Court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the Court to hear your side of the case. If you do not file your response on time, you may lose the case and your wages, money and property may thereafter be taken without further warning from the Court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the Court, you must also mail or take a copy of your written response to the "Plaintiff/Plaintiff's Attorney" named below.

DATED ON _____, 2005.

~~DOROTHY H. WILKEN~~
As Clerk of the Court

Deputy Clerk


HARVEY RUVIN

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11:00 AM
EVA
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IMPORTANTE


Usted ha sido demandado legalmente. Tiene 20 días, contados a parti del recibo de esta notificación, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefónica no le protegerá. Si usted desea que el tribunal considere su defensa, debe presentar su repuesta por escrito, incluyendo el numero del caso y los nombres de las personas interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podria ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desex, usted pueete consular a un abogado inmediatamente. Si no conoce a un abogado sudee llamar a una de las oficinas de asistencia legal que aparecen en la guía telefónica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presente su respuesta ante el tribunal, usted debe envia por correo o entregar una copia de su respuesta a la persona denominada como "Plaintiff/Plaintiff's Attorney" (Abogado del Demandante).

IMPORTANT

Des poursuites judiciares ont ete entreprises contre vous. Vous avez 20 jours consecutifs a parti de la date de l'assignation de cete citation pour deposer une reponse ecrite a la plainte ci-jointe apres de ce tribunal. Un simple coup de telephone est insuffisant pour vous proteger. Vous etes oblige de deposer votre reponse ecrite, avec mention du numero de dossier-ci-dessus et du nom des parties nommees ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne deposez pas votre response ecrite dans le delai requis, vous risque de perdre la cause ainsi que votre saltire, votre argent, et vos biens peuvent etre saisis par la suite, sans aucun preavis ulterieur du tribunal. Il y a d'autres obligations juridiques et vous pouvez requerir les services immediats d'un avocet. Si vous ne connaissez pas d'avocat, vous pourriez telephoner a un service de reference d'avocats. ou a un bureau d'assistance juridique (figurant a l'annuaire de telephones).

Si vous choisissez de deposer vous-meme une response ecrite, il vous faudra egalement, en meme temps que cette formailte, faire parvenir ou expediter une copie de votre response ecrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou a son avocat) nomme ci-dessous.



Dennis G. Fano Jr., Esq.
Law Offices of Dennis G. Fano, P.A.
Attorneys for Plaintiff
Mizner Office Tower
225 NE Mizner Blvd.
Boca Raton, FL 33432
Tel. (561) 620-2340

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

JUAN CORTES,

CASE NO.: 05 067 350A 02

Plaintiff,

JUDGE

v.

THE MARKET COMPANY,
a Florida Corporation, THE CITY
OF MIAMI BEACH, a municipal
Corporation, and CLAIRE TOMLIN,
individually,

Defendants.

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PLAINTIFF'S AMENDED VERIFIED PETITION FOR
TEMPORARY INJUNCTION

COMES NOW, the Plaintiff, JUAN CORTES, and files this, his Amended Verified Petition for Temporary Injunction with notice to the adverse parties, pursuant to FLA.R.CIV.P. 1.610 and as grounds therefore, will show unto the Court as follows:

1. The Plaintiff, a retail merchant, owns and operates a retail establishment on Espanola Way, Miami Beach, Dade County Florida.
2. The Defendant, CITY OF MIAMI BEACH, (hereinafter referred to as "The City") has a contract with Defendant, THE MARKET COMPANY (hereinafter referred to as the "Market Company") whereby the Market Company is authorized to rent city property to vendors in which they may conduct their retail business and display the products offered for sale in their business. The Contract was entered into in Dade County Florida. (The Contract, "The Management and Operation Agreement for the Espanola Way Market" is attached hereto as Exhibit "A")

3. The Plaintiff is a retail merchant who rents from a third party in Dade County Florida.
4. Defendant CLAIRE TOMLIN (hereinafter referred to as "Defendant Tomlin") is the President of Defendant, Market Company which has a principle place of business in Dade County, Florida.
5. Subsequent to the Plaintiff renting retail space from a third party, Defendant, Tomlin, individually, threatened Plaintiff by stating that if Plaintiff did not rent directly from her, she would situate a vendor directly in front of their establishment.
6. Consistent with Defendant Tomlin's threats, Defendants have allowed vendors to block Plaintiff's business from the view of the public. Specifically, Defendants have allowed the vendors to line the sidewalk and the street in front of Plaintiff's business so to directly block Plaintiff's business thereby harming Plaintiff's business.
7. As the Defendants have subsequently allowed various third-party vendors to completely block the Plaintiff's window display, the Plaintiff is suffering and will continue to suffer immediate, irreparable harm, for which he will have no adequate remedy at law if this temporary injunction is not granted. By the very nature of the fact that the Defendants rent to retail vendors along the sidewalks and actual street (Española Way), Defendants will suffer no monetary damages if this Temporary Injunction is granted. However, the Plaintiff will lose the ability to operate its ongoing business, including customer good will and name identification, which assets are of a special


value and for which there is no adequate remedy to compensate the Plaintiff if it is not allowed to operate its business within view from the public.

8. The undersigned attorney has given notice to the Defendant, Market Company and Tomlin in a letter dated January 14, 2005 (a copy of which is attached hereto as Exhibit "B"). However, notice of the lost business has not been responded to by the Defendants aside from the fact that Defendants have gone farther to allow additional vendors to block the storefront of Plaintiff from the public.
9. The undersigned attorney had multiple telephone conversations with The City's asset manager, Jose Damien with regard to resolving this issue. However, to date, no resolution has been effectuated.
10. That pursuant to the Management and Operation Agreement, section 3.1.6, Defendant Market Company is to meet with Plaintiff within fourteen (14) days of said notice of conflict in a good faith effort to resolve the conflict. To date, The Market Company has not made an effort to meet with Plaintiff upon receipt of the January 14, 2005 notice. It has been in excess of fourteen (14) days.
11. The Plaintiff requests that this Court set a minimal bond on this matter, if any, as the Plaintiff is not asking that the Defendants be retrained from its business of renting retail space, only that the Defendants retrain from situating vendors in a way that restricts the public's view of Plaintiff's business from the sidewalk and street. Therefore, there should be very little inconvenience, and damages, if any, to the Defendants if this injunction is improperly granted.

WHEREFORE, the Plaintiff prays that this Court enter a Temporary Injunction requiring the Defendants to grant to the Plaintiff, the right to be reasonably unobstructed from the view of the public in the market by vendors.

Respectfully Submitted,

Law Offices of Dennis G. Fano, P.A.
Mizner Park Office Tower
225 NE Mizner Boulevard
Suite 300
Boca Raton, FL 33432
Tel: (561) 620-2340
Fax: (561) 620-2341



Dennis G. Fano, Jr., Esq.
Florida Bar No.: 0533572

VERIFICATION

STATE OF FLORIDA

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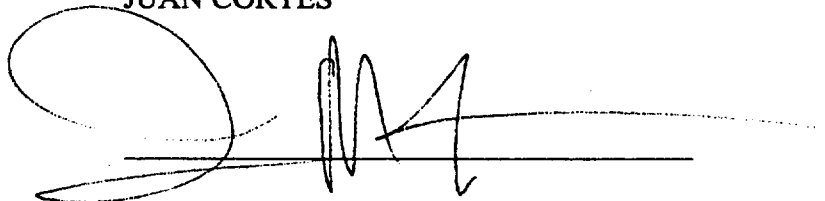
) ss.:

COUNTY OF DADE

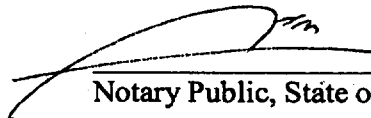
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JUAN CORTES, who being first duly sworn, deposes and says as follows: I have read the foregoing Amended Verified Petition for Temporary Injunction and to my knowledge, all allegations contained therein are true and correct.

JUAN CORTES



The foregoing instrument was acknowledged, sworn to and subscribed under oath before me, a Notary Public in and for the State of Florida, by JUAN CORTES, who is personally known or produced FD # C 6 32-433-69-085 as identification, on this 29 day of April, 2005.



Notary Public, State of Florida

My commission expires: Jan 2, 2006



Allan Kiblsky
Commission #DD081895
Expires Jan. 2, 2006
Bonded Thru
Atlantic Bonding Co., Inc.